IN THE HIGH COURT OF CHHATTISHGARH AT BILASPUR

Writ Petition No. 448 2004

PETITIONER -------- Rajkumar Gurjar S/o Shri Sooraj Prasad , Aged about –28 years, Occu.-Secretary Village Asandeeh, P.O.-Janakpur block vadrafnagar.

VERSUS

RESPONDENTS ------- 1) State of Chhattishgarh through secretary Panchayat and gramina vikas vibhag D.K.S. Bhawan Raipur (C.G.)

2) Chief executive officer District Panchyat Vadrafnagar Surguja(C.G.)

3) Village Pnachayat Asndeeh through Sarpanch(Janpad Panchayat) Vadrafnagar surguja (C.G.)

P.R. No. 445/04 Presented by Shri Sant Umar Patel Advocate on 09.02.04

RECEIVED COPY 9.2.04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226, 227 OF CONCTITUTION OF INDIA

(1) PARTICULARS ABOUT THE PETITIONER :

The details of the Petitioner are shown in the cause title

(2) PARTICULARS ABOUT THE RESPONDENTS :

The details of the Respondent are shown in the cause title.

8/2/04

(92)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..WP.ND...478/2004 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4-5-2005

On a mention being made, the case is taken up for hearing.

Smt. Hamida Siddique, counsel for the petitioner.

Shri Sandeep Dubey, G.A. for the State/respondent No.1.

Shri Alok Bakshi, counsel for respondents No.2 and 3.

Heard.

Return has already been filed on behalf of respondents.

The case of the petitioner is that he was appointed as Panchayat Karmi of the village Panchayat Asandeeh on 8-11-95 and thereafter the petitioner was appointed as Panchayat Secretary being Panchayat Karmi under Section 69 of the Panchayat Raj Adhiniyam vide order dated 7-8-99. In the year 2000, one Ahibaran was elected as Sarpanch and he was having some animosity against the petitioner, therefore, he convened Gram Sabha on 25-8-2000 in which said Abhibaran could not succeed. In the Gram Sabha, the proposal for removal of the petitioner from the post of Panchayat Karmi was turned down. However, the petitioner was transferred from village Panchayat Asandeeh to Torpha. Again Gram Sabha was convened by the Collector on 23-1-2001 and without any agenda the petitioner was removed and information was sent by post against which the petitioner preferred an appeal before the S.D.O. which was allowed vide order dated 30-9-2002 with a direction to convene fresh Gram Sabha. The petitioner was again appointed on 4-10-2002. However, He was working since 5-10-2002 as Panchayat Karmi.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....WP(S)...448/2004 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Thereafter, Ahibaran was removed from the post of Sarpanch. However, his wife namely Manmati was elected as Sarpanch and she convened a meeting of Gram Sabha on 2-10-2003. Without any agenda, the petitioner was removed by the Gram Sabha.

Learned counsel for the petitioner submitted that the petitioner has been removed without giving any show cause notice and without giving any opportunity to the petitioner, merely because Ahibaran was keeping grudge against the petitioner. She further submitted that the petitioner's services were governed by the Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the rules, 1999). The disciplinary authority was required to follow the Rule-7 of the said Rules for imposing major penalty. But, that was not adopted and the services of the petitioner were terminated in arbitrary and discriminatory manner without following the procedure merely on the basis of resolution of the Gram Sabha.

It is admitted position that that the petitioner is a Panchayat Karmi and, therefore, his services are governed by the rules, 1999. Rule 5 of the said Rules prescribed the penalties and sub-rule (b) of Rule-5 prescribed Major Penalties. Sub-rule (1) of Rule-7 lays down that 'no order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided." Since the major penalty was imposed on the petitioner,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

therefore, the procedure as envisaged in Rule-7 ought to have been followed by the respondents. If we look into the sub-rules 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the said Rules, none of these rules were followed by the respondents in conducting the enquiry because the disciplinary authority did not frame definite charges on the basis of the statements of allegations and such charges were not communicated along with the statements of allegations and to require him to submit his written statement of defence nor he was informed as to whether he desires to be heard in person.

The petitioner has been removed from the post of Panchayat Karmi merely on the basis of the resolution passed by the Gram Sabha. Even no enquiry was conducted against the petitioner as per Rule-7 of the Rules, 1999, therefore, in view of the above, whole procedure adopted in removing the petitioner is contrary to the Rules, 1999 which cannot be sustained.

In the result, the petition of the petitioner deserves to be allowed and the same is allowed and the orders dated 6-1-2004 (Annexure-P/1) and 6-10-2003 (Annexure-P/2) are quashed.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Barve